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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140403312-4312-01]

RIN 0648-BE17

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Proposed 2014-2015 Spiny Dogfish Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed specifications; request for comments.

SUMMARY: This rule proposes catch limits, commercial quotas, and possession limits for the spiny dogfish fishery for the 2014-2015 fishing years. The proposed action was developed by the Mid-Atlantic and New England Fishery Management Councils pursuant to the fishery specification requirements of the Spiny Dogfish Fishery Management Plan. These management measures are supported by the best available scientific information and reflect recent increases in spiny dogfish biomass, and are expected to result in positive economic impacts for the spiny dogfish fishery while maintaining the conservation objectives of the Spiny Dogfish Fishery Management Plan.

DATES: Comments must be received on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of the amendment, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the action are

available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The amendment is also accessible via the Internet at: <http://www.nero.noaa.gov>.

You may submit comments, identified by NOAA-NMFS-2014-0053, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0053](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0053), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on Spiny Dogfish Specifications.”

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF formats only.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281-9273.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Atlantic spiny dogfish (*Squalus acanthias*) fishery is jointly managed by the New England and Mid-Atlantic Fishery Management Councils. The Atlantic States Marine Fisheries Commission also manages the spiny dogfish fishery in state waters from Maine to North Carolina through an interstate fishery management plan (FMP). The Federal Spiny Dogfish FMP was implemented in 2000, when spiny dogfish were determined to be overfished. The spiny dogfish stock was declared to be successfully rebuilt in 2010, and it continues to be above its target biomass.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying an annual catch limit (ACL), commercial quota, possession limit, and other management measures for a period of 1–5 years. The Mid-Atlantic Council’s Scientific and Statistical Committee (SSC) reviews the best available information on the status of the spiny dogfish population and recommends acceptable biological catch (ABC) levels. This recommendation is then used as the basis for catch limits and other management measures developed by the Council’s Spiny Dogfish Monitoring Committee and Joint Spiny Dogfish Committee (which includes members of both Councils). The Councils then review the recommendations of the committees and make their specification recommendations to NMFS. NMFS reviews those recommendations, and may modify them if necessary to ensure that they are consistent with the FMP and other applicable law. NMFS then publishes proposed measures for public comment.

NMFS implemented specifications for the spiny dogfish fishery for the 2013-2015 fishing years on May 1, 2013 (78 FR 25862). However, due to updated scientific information on stock status (see below), the Councils are recommending revised specifications for the 2014 and 2015 fishing years.

#### Spiny Dogfish Stock Status Update

In September 2013, the NMFS Northeast Fisheries Science Center updated the spiny dogfish stock status, using the most recent catch and biomass estimates from the 2013 spring trawl survey. Updated estimates indicate that the female spawning stock biomass (SSB) for 2013 was 466 million lb (211,374 mt), about 33 percent above the target maximum sustainable yield (MSY) biomass proxy ( $SSB_{MAX}$ ) of 351 million lb (159,288 mt). The 2012 fishing mortality rate ( $F$ ) estimate for the stock was 0.149, well below the overfishing threshold ( $F_{MSY}$ ) of 0.2439. Therefore, the spiny dogfish stock is not currently overfished or experiencing overfishing. While stock size and recruitment have increased in recent years, poor pup production from 1997-2003 is projected to result in declines in SSB from 2014-2020, when the pups from the 1997-2003 years recruit to the spawning stock.

The SSC reviewed this information and recommended increasing the ABC levels for spiny dogfish for the 2014-2015 fishing years. The ABC recommendations were based on an overfishing level of median catch at the  $F_{MSY}$  proxy, and the Mid-Atlantic Council's risk policy for a Level 3 assessment (40-percent probability of overfishing). The resulting new spiny dogfish ABCs are 60.839 million lb (27,596 mt) (increased from 55.455 million lb (25,154 mt)) for 2014, and 62.413 million lb (28,310 mt) (increased from 55.241 million lb (25,057 mt)) for 2015.

#### Council Recommendations

The Councils' Spiny Dogfish Monitoring Committee and the Commission's Spiny Dogfish Technical Committee met in September 2013 to determine the resulting ACLs and quotas following the FMP's process. To calculate the commercial quota for each year, deductions were made from the ABC to account for Canadian landings (143,000 lb (65 mt)), U.S. discards (11.605 million lb (5,264 mt)), and U.S. recreational harvest (53,000 lb (24 mt)). For 2014, the revised ACL would be 60.695 million lb (27,531 mt), and the commercial quota would be 49.037 million lb (22,243 mt) (+20 percent from 2013), before potential deductions for the Research Set-Aside (RSA) program (pending the approval of Amendment 3 to the Spiny Dogfish FMP; 79 FR 19861; April 10, 2014). A total of 250,000 lb (113 mt) of spiny dogfish RSA has been preliminarily approved for the 2014 fishing year. For 2015, the revised ACL would be 62.270 million lb (28,245 mt), and the commercial quota would be 50.612 million lb (22,957 mt) (+24 percent from 2013), before potential RSA deductions.

The Councils recommended different spiny dogfish trip limits for 2014 and 2015. The Mid-Atlantic Council recommended the status quo trip limit (4,000 lb (1,814 kg)), in acknowledgment of recent market demand and processing capacity issues, and a desire to control the rate of landings across the year. The spiny dogfish fishery is projected to land only about 40 percent of its 2013 commercial quota due to these market constraints. The New England Council recommended no limits on the possession of spiny dogfish, with the objective of allowing the fishery to harvest as much spiny dogfish as possible under the increased quotas. We do not know at this time what trip limits the Commission may implement for state waters.

Under the FMP, when the two Councils recommend different specification measures, NMFS has the discretion to implement any measure not specifically rejected by both Councils. In this case, NMFS may implement whatever trip limit is deemed the most appropriate based

upon the advice of the Councils and public comments. In this rule, NMFS is proposing the New England Council's recommendation of unlimited possession of spiny dogfish, but is specifically requesting public input on these alternatives to help determine what trip limit is really preferred.

As currently specified in the FMP, quota period 1 (May 1 through October 31) would be allocated 57.9 percent of the commercial quota, and quota period 2 (November 1 through April 30) would be allocated 42.1 percent of the commercial quota. However, the Councils have approved, and NMFS has proposed to implement, Amendment 3 to the FMP, which would eliminate the seasonal allocation of the commercial quota (79 FR 19861; April 10, 2014). Upon implementation of Amendment 3, if approved, the Federal commercial quota and trip limit would only be specified on an annual, coastwide basis.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purpose of E.O. 12866.

The Councils prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the SUMMARY of this proposed rule. A summary of the IRFA follows. A copy of this analysis is available from the Councils (see ADDRESSES).

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

#### Description and Estimate of Number of Small Entities to Which the Rule Would Apply

This rule would impact fishing vessels, including commercial fishing entities that hold spiny dogfish permits. In 2012, 2,666 vessels held spiny dogfish permits. However, not all of those vessels are active participants in the fishery; only 489 vessels landed spiny dogfish in 2012. Additionally, if two or more vessels have identical owners, these vessels are considered to be part of the same firm. When permit ownership data is considered, in 2012, 1,976 fishing firms held at least one spiny dogfish permit. According to the Small Business Administration (SBA), firms are classified as finfish or shellfish firms based on the activity from which they derive the most revenue. Using the \$5M cutoff for shellfish firms (NAICS 114112) and the \$19M cutoff for finfish firms (NAICS 114111), there are 1,953 directly regulated small entities and 23 directly regulated large entities. There are 488 active fishing firms, of which 482 are small entities and 6 are large entities. On average, for small entities, spiny dogfish is responsible for a small fraction of landings, and active participants derive a small share of gross receipts from the spiny dogfish fishery. While all 1,953 directly regulated small entities would be affected by these specifications, many of these small entities do not currently participate in this fishery and would be likely to experience only negligible economic impacts, if any.

#### Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

Three management alternatives were analyzed for each year, 2014 and 2015. As described in the EA for this action (see ADDRESSES), Alternative 1 represents the Mid-Atlantic Council's recommended revised quotas and trip limits, Alternative 2 represents the New England

Council's recommended revised quotas and trip limits, and Alternative 3 represents the no action quotas and trip limits for 2014 and 2015. While both Councils recommended the same revised ACLs and commercial quotas in Alternatives 1 and 2, as described above, the Mid-Atlantic Council recommended a 4,000-lb (1,814-kg) trip limit and the New England Council recommended an unlimited trip limit. The no action alternative (Alternative 3) includes lower ACLs and commercial quotas than the other two alternatives, and maintains a 4,000-lb (1,814-kg) trip limit, reflecting the final 2013-2015 spiny dogfish specifications implemented by NMFS on May 1, 2013 (78 FR 25862). Alternative 2 (the New England Council's recommendation) is the preferred alternative proposed in this rule.

According to the analysis in the EA (see ADDRESSES), all of the alternatives under consideration in this action are expected to result in positive economic impacts. Alternatives 1 and 2 would increase the maximum potential landings for the spiny dogfish fishery during 2014 and 2015, as compared to Alternative 3. However, the commercial quotas in all three alternatives are higher than realized spiny dogfish landings during recent fishing years. In the 2013 fishing year, which ended on April 30, 2014, the spiny dogfish fishery landed only about 40 percent of its 40.842-million lb (18,526-mt) quota (refer to landings data at [www.nero.noaa.gov](http://www.nero.noaa.gov)), largely due to market issues and declines in demand in the primary export markets. Total spiny dogfish revenue from the 2012 fishing year was reported as \$5.3 million, reflecting an average price of \$0.20 per lb. The commercial quotas in Alternatives 1 and 2, if fully utilized, would correspond to approximately \$9.9 million in potential revenue, whereas, the lower commercial quota in Alternative 3 would correspond to approximately \$7.9 million in potential revenue.



Trip limits influence the rate of landings across the fishing year, and are not expected to result in direct positive or negative economic impacts on the fishery as a whole. While different trip limit alternatives may affect trip-level revenues, and have variable, short-term effects on price, total spiny dogfish revenues will still be largely influenced by the quota. While the New England Council's recommendation for unlimited possession may help the fishery achieve more of its allowable landings, continuing processing and market demand constraints may limit the ability of the fishery to accomplish this. Furthermore, the Commission and individual states may implement various spiny dogfish trip limits in their state waters (current trip limits range from 4,000 lb (1,814 kg) to 10,000 lb (4,536 kg) per trip), which would effectively limit the allowable possession of spiny dogfish by Federal permit holders.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 6, 2014

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.235, revise the introductory text to paragraphs (a) and (b), and revise paragraphs (a)(1) and (b)(1) to read as follows:

§ 648.235 Spiny dogfish possession and landing restrictions.

(a) Quota period 1. From May 1 through October 31, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

- (1) Possess an unlimited amount of spiny dogfish per trip; and

\* \* \* \* \*

(b) Quota period 2. From November 1 through April 30, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

- (1) Possess an unlimited amount of spiny dogfish per trip; and

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